

APPLICANTS:
Duane & Yolanda Henry

REQUEST: A variance to allow a fence to exceed 4 feet in height within the front yard setback

HEARING DATE: August 17, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5495

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Duane A. Henry

CO-APPLICANT: Yolanda Henry

LOCATION: 1262 Courtney Lane – Riverside
Tax Map: 62 / Grid: 1F / Parcel: 734 / Lot: 107
First Election District (1st)

ZONING: R4 / Urban Residential District

REQUEST: Variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow a fence to exceed 4 feet in height (6 feet proposed), within the front yard setback.

TESTIMONY AND EVIDENCE OF RECORD:

Duane Henry, co-applicant, testified that he and his wife purchased the subject property in October 2004. The property is an approximately .198 acre lot improved by a single family home, pool, deck and shed. Before they actually moved into the home they began to construct a fence around a portion of the rear of their property. They eventually paid their contractor \$4,800.00 for a fence which is 6 feet in height and which, by photos submitted by the Harford County Department of Planning and Zoning, appears to be a solid, stockade type fence. The Applicants were unaware that a permit was necessary to construct the fence. Only after the fence was built were the Applicants first notified that the portion of the fence with encroaches into the front yard setback is in violation as being above the maximum 48 inches height limitation as contained in 267-24B(1).

The Applicants described their reasons for constructing the fence. They have six children, with a pool, a pond, and playground equipment in their backyard. They believe that for safety purposes a 6 foot high fence is necessary. The Applicants also had earlier requested approval from the Riverside Community Association for the fence as it now exists. The Riverside Communication Association, by its letter dated October 25, 2004, gave its consent. According to the Applicants the By-Laws of the Riverside Community Association in fact require a 6 foot high fence around existing pools.

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Mr. Henry has examined other fences in his neighborhood and has found a number which are similar to the one proposed by him. The Applicant also stated that his lot actually has two sides on Courtney Lane and is accordingly impacted by two front yard setback requirements. The front yard into which the fence extends in fact functions as a side yard if one were to look at the house from the front.

The Applicant gave additional reasons for believing his property is unique. The property contains two mature trees which required some deviation in the location of the fence. Being a corner lot, the property is also subject to neighborhood children cutting through the yard. The Applicants also feel that the fence will provide them necessary privacy from passing traffic. The Applicants believe there will be no impact on the surrounding properties if the variance were granted and, indeed, no neighbor has expressed any opposition to the variance request.

For the Harford County Department of Planning and Zoning testified Dennis J. Sigler. Mr. Sigler reiterated the findings of the Department in stating that the property is unique. The existing fence is located only about 3 feet within the front yard setback to the side of the home. It is, in Mr. Sigler's opinion, very difficult if not impossible to determine, visually, that the fence actually encroaches into the front yard setback. The property is a corner lot which is unusual in the Riverside subdivision. Furthermore, the fence does not affect sight distances of any passers-by or motorists along Courtney Lane, and should cause no adverse impact to those users, or to the surrounding property owners.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Section 267-24B(1) of the Harford County Code states:

- “B. *Fences and walls. Fences and walls may be located in required yards in accordance with the following:*
 - (1) *Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants live in an attractive home with six children. When purchased in the fall of 2004 they immediately caused a fence to be constructed to enclose not only an existing pond, but also a pool which was constructed by the Applicants for the benefit of their family. As a corner lot, the Applicants’ property was also used by neighboring children as a cut-through, and was also subject to, quite obviously, a fair amount of noise and impact by traffic which passes on two sides of the lot. The fence was constructed, quite understandably, in order to help mitigate these impacts and protect the Applicants’ and neighborhood children.

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If it were not for the fact that the property is indeed a corner lot, no variance would be necessary. Since it is a corner lot, with the second front yard setback in what is effectively the side yard of the house, the fence, as constructed by the Applicants, is in violation of the maximum height requirement. Mr. Sigler believes that the encroachment of the fence within the front yard is not at all noticeable.

It is accordingly found that the subject property suffers an unusual feature in that it is encumbered by two front yard setbacks which prohibit the Applicant from being able to fully utilize the property as do others in the neighborhood, without the granting of this relatively minor setback variance.

It is further found that the setback variance is necessary not only for the enjoyment of the Applicants' property, but also for the protection of their children and for the protection of other children in the neighborhood.

It is further found that the variance, if granted, would have no adverse impact and would, for reasons set forth above, most likely be a benefit to the community.

CONCLUSION:

It is accordingly recommended that the proposed variance be approved, subject to the Applicants obtaining all necessary permits and inspections.

Date: September 2, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 3, 2005.